

RELEASE OF CLAIMS AND SETTLEMENT AGREEMENT

WHEREAS, KEVIN DETURRIS (“DETURRIS”) was formerly employed by FASCO MECHANICAL & CONTRACTING INC. and has commenced an action in the UNITED STATES DISTRICT COURT for the EASTERN DISTRICT OF NEW YORK captioned *KEVIN DETURRIS vs. FASCO MECHANICAL & CONTRACTING INC. et. al.*, Docket No. 1:20-cv-02616-WFK-RER (the “Action”), in which it is alleged that the defendants failed to properly pay wages in compliance with the Fair Labor Standards Act of 1938 (“FLSA”) and the New York Labor Law (“NYLL”), and that defendants failed to provide a wage notice and/or wage statements in violation of the New York Wage Theft Protection Act (“WTPA”); and

WHEREAS, contemporaneously with the execution of this Release, DETURRIS is receiving from or on behalf of FASCO MECHANICAL & CONTRACTING INC. the gross amount of \$21,000.00 in full settlement of any and all claims asserted against FASCO MECHANICAL & CONTRACTING INC. and related persons and entities in this Action.

WHEREAS, the terms and conditions of this Release have been explained to DETURRIS by counsel, who was actively involved in the negotiation of the settlement and of this release, and covenants that understands the terms and agrees thereto,

NOW THEREFORE, IT IS AGREED AS FOLLOWS:

1. In exchange for the payment by FASCO MECHANICAL & CONTRACTING INC. or on its behalf in the amount of \$21,000.00;
 - (a) DETURRIS agrees and covenants that the Action will be dismissed with prejudice against all defendants based on the settlement described herein, and there has not been filed, nor will be cause to be filed, any other claims, actions or other proceedings against FASCO MECHANICAL & CONTRACTING INC., its officers, directors,

owners, shareholders, parents, affiliates, divisions, subsidiaries, members, managers, supervisors, agents, predecessors, professional employer organizations, insurers, and counsel and their agents and employees at any time in the future arising out of any facts that are known to exist or that may exist through and including the date of execution of this Release regarding the payment of wages during or after employment. To the extent the approval of the Court is required to obtain the dismissal of the Action on behalf of DETURRIS, DETURRIS and counsel agree to cooperate in obtaining such approval. In the event that, for any reason, any complaint, appeal, suit, action, charge, claim and/or proceeding is filed or has already been filed by or on behalf of DETURRIS other than the Action, DETURRIS shall take all necessary steps to dismiss or withdraw same with prejudice and he shall not obtain or accept any recovery or relief therefrom;

(b) DETURRIS knowingly and voluntarily releases and forever discharges Releasees of and from any actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, bonuses, commissions, controversies, agreements, promises, judgments, obligations, grievances, claims, charges, complaints, appeals and demands whatsoever, in law or equity, which was raised in this Action against Releasees as of the date of execution of this Release.

(c) It is DETURRIS's intention that the execution of this Release will forever bar every claim, demand, cause of action, charge and grievance that is referenced in Paragraph 1(b) herein against Releasees existing at any time prior to and through the date of execution of this Release, and DETURRIS covenants not to sue Releasees based on any released claims; and will pay Releasees' reasonable attorneys' fees and costs incurred if DETURRIS breaches that covenant.

(d) In the event that DETURRIS institutes, is a party to, or is a member of a class or collective that institutes any claim or action against Releasees arising from conduct which predates this Release, and which is referenced in Paragraph 1(b) herein, DETURRIS agrees that the released claims shall be dismissed or class or collective membership terminated immediately upon presentation of this Release, and shall execute any papers necessary to achieve this end;

(f) DETURRIS affirms that, as of the date of this Release, he has received, been paid and/or has received all leave (paid and unpaid), compensation, wages, bonuses, commissions, and/or benefits to which he may be entitled and that no other leave (paid or unpaid), compensation, wages, bonuses, commissions and/or benefits are due to him except as provided in this Release.

2. In exchange for the promises made by DETURRIS contained in Paragraph 1 above, FASCO MECHANICAL & CONTRACTING INC. agrees to provide DETURRIS's attorneys with payments checks in the total gross settlement sum of \$21,000.00, made payable in the following schedule:

(a) One cheque in the amount of \$13,674.00, payable to KEVIN DETURRIS, for which a Form 1099 will be issued pursuant to IRS regulations in 2020, and one cheque in the amount of \$7,326.00, payable to Aidala, Bertuna, and Kamins, P.C., as and for DETURRIS's attorneys' fees and costs, for which a Form 1099 will be issued pursuant to IRS regulations in 2020. This payment will be made within ten (10) days of the approval of this settlement by the Court by overnight mail to Counsel for KEVIN DETURRIS at 546 5th Avenue, 6th Floor, New York, New York 10036.

(b) Should any of the payments not be made timely as set forth in of this Agreement, DETURRIS shall provide electronic notice to John C. Gugliotta, Esq. at gugliottalaw@optonline.net, stating that payment was not timely made. Upon receipt of written notice, non-payment shall be cured within five (5) days. Further, in the event non-payment is not cured within five (5) days of notification, DETURRIS may immediately seek enforcement of the settlement agreement and FASCO MECHANICAL & CONTRACTING INC. and FRANK SCALERA, jointly and severally, will pay DETURRIS's reasonable attorneys' fees and costs incurred in the enforcement action. Further, DETURRIS shall be entitled to an additional sum of \$5,000.00 and all payments scheduled shall be due immediately to be paid by FRANK SCALERA and FASCO MECHANICAL & CONTRACTING INC. jointly and severally.

UNITED STATES DISTRICT COURT for the EASTERN DISTRICT OF NEW YORK shall retain jurisdiction for any action for enforcement of this Agreement.

3. DETURRIS acknowledges and agrees that neither Releasees nor counsel, nor DETURRIS's counsel, have made any representations to DETURRIS regarding the tax consequences of any amounts paid pursuant to this Release. To the extent there are any additional tax consequences to DETURRIS or FASCO MECHANICAL & CONTRACTING INC. arising from the payment of such portion of the settlement amount other than those normally attendant to W-2 income, DETURRIS agrees to indemnify and hold Releasees harmless for all additional taxes, interest and penalties.

4. DETURRIS acknowledges that Defendants have entered into this settlement solely for the purpose of avoiding the burdens and expense of protracted litigation. Further, the parties agree that neither this Release nor the furnishing of consideration for the Release shall be construed as an admission that Defendants or any Releasee has violated any federal, state, or

local law (statutory or decisional), ordinance, or regulation, or that Defendants or any Releasee has committed any wrong against DETURRIS.

5. This Release supersedes any prior agreements or understandings pertaining to the subject matter of this Release as addressed above. DETURRIS acknowledges that he has not relied on any representations, promises or agreements of any kind made in connection with the decision to sign this Release. No other promises or agreements shall be binding or shall modify this Releasee unless in writing and signed by Releasees.

7. This Release is made in the State of New York and shall be interpreted under the laws of said State. Its language shall be construed as a whole according to its fair meaning and not strictly for or against any Party.

8. Should any provision of this Release be declared illegal or unenforceable by any court of competent jurisdiction, and such provision cannot be interpreted or modified so as to be enforceable, excluding the release language in Paragraph 1, such provision shall immediately become null and void, leaving the remaining provisions of this Release in full force and effect.

9. This Release shall be binding upon and inure to the benefit of DETURRIS's heirs, executors, administrators, successors, and assigns.

**DETURRIS FREELY AND KNOWINGLY, AND AFTER DUE CONSIDERATION,
ENTERS INTO THIS RELEASE INTENDING TO WAIVE, SETTLE AND RELEASE
ALL WAGE AND HOURS CLAIMS HE MIGHT HAVE AGAINST RELEASEES.
DETURRIS IS ALSO ADVISED TO CONSULT WITH AN ATTORNEY PRIOR TO
SIGNING THIS RELEASE AND ACKNOWLEDGES HAVING DONE SO.**

KEVIN DETURRIS

Date: 09 / 18 / 2020



FASCO MECHANICAL &
CONTRACTING INC.

Date :

By : _____

Title : _____

FRANK SCALERA

Date :

By : _____

Title : _____



TITLE	Settlement Agreement Final Deturris.pdf
FILE NAME	Settlement%20Agre...al%20Deturris.pdf
DOCUMENT ID	89f0ec4dd65eff9306db45826ac02f74c2901dc8
AUDIT TRAIL DATE FORMAT	MM / DD / YYYY
STATUS	● Completed

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Document History

SENT	09 / 17 / 2020 22:31:30 UTC	Sent for signature to Kevin Deturris (Deturriskevin1@gmail.com) from lspasojevich@gmail.com IP: 67.254.145.139
VIEWED	09 / 18 / 2020 13:40:24 UTC	Viewed by Kevin Deturris (deturriskevin1@gmail.com) IP: 172.58.219.82
SIGNED	09 / 18 / 2020 13:48:02 UTC	Signed by Kevin Deturris (deturriskevin1@gmail.com) IP: 69.112.24.152
COMPLETED	09 / 18 / 2020 13:48:02 UTC	The document has been completed.